

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Jefferson-Martin 230 kV Transmission Project.

Application 02-09-043
(Filed September 30, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NATIONAL PARK SERVICE EX PARTE COMMUNICATIONS**

The National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) have communicated with Commissioners and the Administrative Law Judge regarding potential routes for the Jefferson-Martin transmission project. As an example, in a July 6, 2004 letter, the NPS identifies 15 mitigation measures which it asks the Commission to include if the Trousdale Drive Hybrid route is approved.

Oral or written communications from these federal agencies intended to influence the decision of a Commissioner constitute ex parte communications as defined in Section 1701.1(c)(4) of the Public Utilities Code. The Commission may not consider recommendations made through such communications because they are not in the record of the proceeding. By this ruling, I direct the NPS and the USFWS to file the requisite reports regarding the ex parte communications. I also provide guidance regarding steps that would allow the Commission to consider these agencies' views.

The NPS and the USFWS should report all ex parte communications in compliance with Section 1701.1(c)(4) and with Rules 7(c)(3),¹ and 7.1 of the Commission Rules of Practice and Procedure (Rules). Since more than three working days have passed since the communications, they should file a “Late Filed Notice of Ex Parte Communication” and should comply in other respects with Rule 7.1 and Article 2 of the Rules, including service on the parties.

The record in A.02-09-043 has been submitted and proposed and alternate decisions have been filed. However, in order to promote comity between federal and state agencies, I find that it is in the public interest to allow the NPS’s and USFWS’s concerns to be properly brought to the Commission’s attention at this time. To this end, these agencies may file a limited appearance in this proceeding no later than August 6, 2004 for the sole purpose of filing comments on the proposed and alternate decisions. The agencies may file a combined Petition to Intervene and Motion to Late File Comments on the Proposed Decision and Proposed Alternate Decision. Such a pleading should contain the information required by Rules 54 and 77.5, and should attach the agency’s Late Filed Comments. Consistent with Rule 77.5, parties may file replies no later than five days after such a filing is made.

Like other filings, the allowed Petition to Intervene and Motion to Late File Comments on the Proposed Decision and Proposed Alternate Decision and parties’ replies must be filed with the Docket Office in paper form. Because of the shortness of time, these filings should be served on the service list in electronic form, pursuant to Rule 2.3(b). Such filings should be e-mailed to the

¹ The Commission has classified Application [\(A.\)](#) 02-09-043 as a ratesetting proceeding.

entire service list including those appearing on the list as “Information Only.” The service list is available at <http://www.cpuc.ca.gov>. Paper format copies, in addition to electronic copies, should be served on the Assigned Commissioner and the assigned Administrative Law Judge, anyone on the Appearance and State Service portions of the service list who does not have a valid e-mail address, and any other party requesting paper format copy.

I remind all persons with an interest in this matter of the necessity of complying with statutory and Commission requirements regarding ex parte communications.

Parties have been given advance electronic notice of this ruling.

IT IS RULED that:

1. The National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) shall comply with Section 1701.1(c)(4) of the Public Utilities Code and with Rules 7(c)(3) and 7.1 of the Commission Rules of Practice and Procedure as described in this ruling.
2. The NPS and the USFWS may, together or separately, file a Petition to Intervene and Motion to Late File Comments on the Proposed Decision and Proposed Alternate Decision no later than August 6, 2004 as described in this ruling. Parties may file replies no later than five days after such a filing is made as described in this ruling.
3. This ruling shall be served on the following persons, in addition to the service list:

Brian O'Neill
National Park Service
Golden Gate National Recreation Area
Fort Mason
San Francisco, California 94123
Nancy_Hornor@nps.gov

Wayne S. White
Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846
Mary_Hammer@fws.gov
Susan_Moore@fws.gov

Dated August 3, 2004, at San Francisco, California.

/s/ CHARLOTTE F. TERKEURST
Charlotte F. TerKeurst
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Ex Parte Communications on all parties of record in this proceeding or their attorneys of record.

Dated August 3, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.